

2010 SEP 17 PM 12: 53

JEANNE HICKS, CLERK
S. KELBAUGH

BY: _____

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENSE MOTION RE:**
) **UNDISCLOSED CHRIS KOTTKE**
) **INTERVIEW**

) **FILED UNDER SEAL**

Late last week we were informed that the State had conducted a 6-hour recorded interview of Chris Kottke. The defense was entirely unaware that any such interview had occurred. In the last few days we have learned these facts: the interview did occur; it occurred around August 17, now a full 4 weeks ago; it was held at the County

1 Attorney's Office; it was attended by Sheila Polk, Jeff Paupore and Michael Sechez;
2 Mr. Kottke was represented by his counsel, Mr. Tom Kelly; and the interview was
3 recorded. During the interview, the County Attorney apparently acknowledged that she
4 had a duty to disclose the interview under Rule 15 in this case. No such disclosure has
5 been made.

7 These events are troublesome for several reasons that we know will be
8 immediately apparent to the Court. First, in the course of the sealed proceedings in this
9 Court that arose from the State's filing of a Motion to Determine Counsel, the County
10 Attorney's Office made representations to this Court [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 [REDACTED] These representations were among the critical
16 statements made to assure that the defense would be able to proceed with this case.

17 Second, to whatever extent this 6-hour interview was conducted to gather
18 additional evidence with respect to the Hartford Life Insurance issue, the State had a
19 duty to disclose it "immediately." We have dissected Rule 15.6 many times in this case.
20 There can be no doubt about what that Rule requires. No disclosure of any type has
21 been made. To the contrary, when we became aware of the Kottke interview on
22 Thursday of last week, we immediately sent an email to the County Attorney
23 demanding a copy of the recording. That email was sent on September 9. We have
24 received absolutely no response.
25
26
27
28

1 Third, we now have reason to believe that the interview contains extremely
2 important information related to the Hartford Life Insurance issues. We are confident
3 that disclosure was required under *Brady*. The nondisclosure is particularly disturbing
4 at this moment because the State informed defense counsel late yesterday that it intends
5 to attempt to introduce testimony about the disposition of the life insurance proceeds as
6 early as next week.
7

8 In light of these discoveries, we ask the Court to hear this matter as soon as
9 possible in a sealed proceeding, and that the Court then confirm that this interview
10 indeed took place and that its contents have remained undisclosed. Once the Court has
11 been provided with the relevant facts with respect to this event, we will move for such
12 sanctions as the circumstances warrant.
13

14 DATED this 17 day of September, 2010.
15

16 By: 
17

18 John M. Sears
19 P.O. Box 4080
20 Prescott, Arizona 86302

21 OSBORN MALEDON, P.A.
22 Larry A. Hammond
23 Anne M. Chapman
24 2929 N. Central Avenue, Suite 2100
25 Phoenix, Arizona 85012-2793

26 Attorneys for Defendant
27

28 **ORIGINAL** of the foregoing hand delivered for
filing this 17 day of September, 2010, with:

1 Jeanne Hicks
2 Clerk of the Court
3 Yavapai County Superior Court
4 120 S. Cortez
5 Prescott, AZ 86303

6 **COPIES** of the foregoing hand delivered this
7 this 17 day of September, 2010, to:

8 The Hon. Warren R. Darrow
9 Judge Pro Tem B
10 120 S. Cortez
11 Prescott, AZ 86303

12 Joseph C. Butner, Esq.
13 Jeffrey Paupore, Esq.
14 Prescott Courthouse basket

15 Chris Dupont
16 245 West Roosevelt
17 Suite A
18 Phoenix, AZ 85003

19
20
21
22
23
24
25
26
27
28
3301384